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In the Supreme Court of the United States

OCTOBER TERM, A.D. 1961

No. 992

GENERAL MOTORS CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA, and INTERSTATE COMMERCE COMMISSION
and
THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY, ET AL., RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION IN OPPOSITION

OPINIONS BELOW

The opinion of the court below is reported in 299 F. 2d 233. The rep . and order of the Interstate Commerce Commission is reported in 306 I.C.C. 345.

JURISDICTION

The judgment of the court below was entered on February 17, 1962, and a timely petition for rehearing was denied on March 31, 1962. The petition for writ of certiorari was filed on May 23, 1962. The jurisdiction of this Court is invoked under Title 28, United States Code, section 1254.

QUESTION PRESENTED

Whether the order of the Interstate Commerce Commission, in construing the tariff provisions in light of their history and what they were intended to accomplish, and in deciding that the railroads properly applied their published tariffs, was supported by substantial evidence, correctly applied the rules of law, and had a rational basis.

STATUTES INVOLVED

Section 6(7) of the Interstate Commerce Act, 49 U.S.C.A. 6(7) provides:

> No carrier, unless otherwise provided by this part, shall engage or participate in the transportation of passengers or property, as defined in this part, unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this part; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than

the rates, fares, and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariff.

STATEMENT

The judgment of the court below affirms the decision of the District Court sustaining orders of the Commission which denied, in part, petitioner's request for reparation upon a determination that the rates charged and collected by the respondent railroads were the applicable rates under the rail carrier's published tariffs.

There is no dispute concerning the facts, the freight tariffs to be considered, the measure of the rates, or the fact that the tariffs were amended on August 20, 1956, to eliminate the controversy.[1]

The shipments in question were mixed carloads of household appliances consisting of cooling boxes or refrigerators, cooling or freezing apparatus combined, household laundry drying machines, and electric stoves and ranges from Moraine, Ohio, to Miami, Florida.[2] These shipments were made during the period from May 30, 1952, to August 20, 1956.

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[1] Effective that date, the railroads established reduced exceptions ratings in connection with the new class rates on household appliances.

[2] One shipment between the points listed was stipulated to be representative of many others.

Prior to May 30, 1952, the published tariffs of the railroads provided a class rate structure which applied within and between the several rate territories of the country.[3] Each territory was controlled by a separate classification. Generally, a class rate structure is like a blanket or web and provides rates between any two points as determined by the classification ratings. Exceptions to a classification provide ratings, either higher or lower than classification ratings, and take precedent over the classification basis. Commodity rates, which are not involved in this proceeding, render inapplicable both classification and exceptions ratings and rates. See, *e.g.*, Docket No. 28300, *Class Rate Investigation, 1939*, 262 I.C.C. 447, at 456.

On May 30, 1952, the railroads established a new uniform class rate scale and a new uniform classification to govern those rates in compliance with the orders of the Commission in Docket Nos. 28300[4] and 28310.[5] In Docket Nos. 28300 and 28310, the Commission made the most extensive readjustment of classifications and underlying class rate structures in the entire history of rate making.[6] In Docket No. 28300, a single uniform class rate structure was pre-

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[3] Official, Southern, Southwestern and Western Trunk Line Territories.

[4] *Class Rate Investigation, 1939*, 262 I.C.C. 447; 264 I.C.C. 41; and 281 I.C.C. 213.

[5] *Consolidated Classification*, 281 I.C.C. 329.

[6] In scope of territory, number of commodities, and carrier revenues affected thereby.

scribed by the Commission between all points in the United States east of Mountain Pacific Territory. In Docket No. 28310, the Commission ordered the railroads to prepare and apply a uniform classification throughout the United States.[1] In No. 28300, it was made clear that the proceeding contemplated class rates only and that neither commodity rates nor exceptions ratings were embraced in that proceeding. See 262 I.C.C. 447, 454, 512; 264 I.C.C. 41, 54; 281 I.C.C. 213, 285. In affirming the above orders in *New York* v. *United States*, 331 U.S. 284, this Court emphasized (at page 330) that:

> * * * The orders of the Commission affect class rates alone, the Commission not dealing with exception and commodity rates.

The new class rates prescribed by the Commission are lower than the old class rates, and shipments subject to exceptions ratings governing the old class rates are charged more than they would be if subject to the new class rates and new uniform classification. In computing charges on mixed carloads of household appliances prior to May 30, 1952, the tariff authorized an alternation, that is, it authorized the computation of charges under the exceptions ratings and rates as compared to the old classification ratings and rates, and the basis which produced the lower sum was the only legal charge which could be applied. In No. 28300, shipping interests sought to have the Com-

[1] The uniform classification ratings were not prescribed by the Commission, the task of establishing them being left to the railroads.

mission require the railroads to alternate the old exceptions ratings and rates with the new uniform ratings and rates, and to apply the lower basis (264 I.C.C. 41, 54-56), or that the Commission require the cancellation of the old exceptions ratings and rates (281 I.C.C. 213, 285). The Commission declined, pointing out that exceptions ratings and rates are not within the scope of the issues in No. 28300. By so doing, the Commission recognized the existence of a dual class rate structure.

The publication by the railroads of the new uniform classification ratings and a single scale of class rates to apply in connection therewith, required by the Commission's orders, marked only one step in the general revision of the overall rate structure of the country. The orders in the above Dockets, Nos. 28300 and 28310, plainly indicated that the Commission expected the railroads to weave the old exceptions and commodity ratings and rates into the uniform classification and uniform class rates scale. This involved a tremendous task of study and labor, for all of the railroads' traffic, except an insignificant portion thereof, moved, and continues to move, under exceptions ratings or commodity rates * rather than on the classification basis.

In order to preserve the old class rates applicable in connection with exceptions ratings until this task

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* There are tremendous variations in the level of these ratings and rates in the several rate territorial sections of the country and a great diversity of factors, competitive and otherwise, led to their initial establishment.

was accomplished, and at the same time to establish the new uniform classification ratings and class rates, the railroads published a rule, Item 300-B, in the new class rates tariff which provided that the new class rates would not apply where a commodity rate or exception or column rating is in effect.[9]

Under authority of the above Item 300-B in the new tariff, the railroads applied the exceptions ratings to the old classifications and the old class rates, based upon the individual rating of each separate article in the shipment, and collected a total charge of $546.60.

Petitioner complained to the Commission that the railroads were incorrectly interpreting their published tariffs in applying the old exceptions ratings and rates rather than the new uniform classification ratings and class rates. The new uniform classification rated each article shipped separately, but contained a specific mixed carload rating of class 55

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[9] Generally speaking, the task has not yet been fully completed. However, certain shippers petitioned the Commission for relief and the Commission, on its own motion, instituted a proceeding entitled Docket No. 32482, *In the Matter of an Alternate Rule Governing Applicable Charges Lower under Docket 28300 Class Rates Than under Exceptions or Commodity Rates.* The petition requesting the relief clearly indicated that the commodity and exceptions basis is considered by the shippers and the railroads as applicable because Item 300 in the new class rates tariff effectively prevented use of the new class rates. Since the railroads had not woven the exceptions and commodity rates into the new uniform class rate basis as instructed by the Commission, the petition requested that an alternation be ordered. The proceeding was dismissed on June 28, 1960, when the railroads published a rule permitting the alternation.

(Item 13980) which produced a lower total charge of $507.94.

The only question presented for determination by the Commission was which one of the two tariffs applied to the shipments in question, the old exceptions ratings and rates or the new uniform classifications ratings and new class rates.

In affirming the judgment of the District Court, the Court below unanimously concluded that the Commission's order, construing the tariff provisions in light of their history and what they were intended to accomplish, and in holding that the railroads properly applied the old exceptions ratings and rates, was supported by substantial evidence, correctly applied the rules of law, and had a rational basis.

ARGUMENT

This case presents no substantial question warranting consideration by this Court. Petitioner seeks essentially to challenge the substantiality of the findings and evidence supporting the Commission's order. It disputes the wisdom with which the Commission resolved the unambiguous tariff applicability question in accordance with its history, the expressed intentions of the Commission in prescribing the new uniform class rates and classifications, and the objective of the railroads, in publishing Item 300-B, to remove any possible alternation of the new uniform class rates where exceptions ratings were established. Each branch of the attack has been thoroughly considered and properly rejected by the court below in affirming the judgment of the District Court sustaining the

Commission's order. There is no conflict of decisions among the various circuits and no need for further review.

1. Petitioner argues (Pet. 8) that the courts below erred as a matter of law in sustaining the Commission's approval of the railroad's application of exceptions ratings and rates rather than the new uniform ratings and rates. It alleges that such an interpretation is contrary to the published provisions of the tariff and produces an illegal rate in violation of section 6(7) of the Act, 49 U.S.C.A. 6(7). But, like the Commission, the courts below found this assertion to be in direct conflict with the stated provisions of the tariffs, and what they were intended to accomplish. The courts below correctly held that the history of proceedings in which the new uniform rates were prescribed clearly shows that the Commission intended that the old rates based on exceptions ratings were not cancelled or suspended by the publication of the new class rate structure and that the objective of the railroads "in publishing item 300 was to remove any possible alternation of the uniform class rates where exceptions ratings were established." The plain design of this tariff rule manifests a clear intention by the rail carriers to remove any possible alternation of the exceptions ratings and rates with the new uniform ratings and rates.

Based on the plain wording of Item 300-B, restricting the application of the new rates and classifications where exceptions ratings are in effect, it cannot be denied that there is a rational basis for the conclusions of the Commission. Petitioner argues here,

as it did in the administrative proceeding and before the courts below, that the Commission's use of the plural "ratings" for the singular "rating" in Item 300-B was error. Petitioner urges that the proper interpretation of the Item 300-B restriction applies only where there is provided a single classification exceptions rating "on a given shipment." It argues that the Commission's construction of the terms of Item 300-B and its conclusions flowing therefrom render meaningless an otherwise effective classification rating (Item 13980-A) and its governing rule (Item 5), and that there is no clear finding that any such consequences were intended as would deprive shippers of the right to use effective provisions of the carriers' tariffs. Obviously, this contention lacks merit. The Commission made a specific finding on this point. (See 306 I.C.C. at 347-8).

Moreover, the Commission's use of the plural "ratings" where only the singular "rating" was used in Item 300-B, is in accordance with the plain meaning of the term, the intention of the railroads in publishing the new class rates scale, and the applicable law. The United States Code, Title 1, Section 1, Rules of Construction, provides that when determining the meaning of any act or resolution of Congress "Words imparting the singular number may extend and be applied to several persons or things." In a recent case, this Court affirmed a Commission determination that joint control by two railroads over a third railroad falls within the long haul protection of section 15(4) of the Act, despite the fact that the language of the statute is framed in the singular.

See *Chicago, Milwaukee, St. Paul & Pacific R. Co.* v. *United States, et al.*, 366 U.S. 745 (1961). Since a tariff is to be considered like a statute, *Penn. R.R. Co.* v. *International Coal Co.*, 230 U.S. 184, 197; *Lowden* v. *Simonds-Shields-Lansdale Co.*, 306 U.S. 516, 520, it follows that the Commission may also fairly construe the singular number to extend to the plural number where, as here, that course is necessary to accomplish the plain meaning and evident purpose and object of Item 300-B of the new class rates tariff.

In sum, the court below found that the Commission correctly construed the applicable tariff provisions in the light of their history and what they were intended to accomplish and that its decision is supported by substantial evidence and correctly applied the rules of law. This issue is not one which warrants further review. *Radio Corp. of America* v. *United States*, 341 U.S. 412, 420; *Universal Camera Corp.* v. *N.L.R.B.*, 340 U.S. 474, 491.

2. Contrary to the allegation of petitioner (Pet. 13), there is no conflict of decision between the various circuits regarding rules of tariff construction. The cases cited (Pet. 13-14) do not support this allegation that the courts are divided on the question of tariff applicability. The Commission considered the provisions of the tariffs in their entirety, and determined that a fair, reasonable and sensible construction thereof expressed the intention of the railroads and accomplished the result sought to be achieved by the Commission in prescribing uniform class rates and in ordering publication of a uniform classification. The orders of the Commission are in strict conformity

with the statutory requirements of section 6(7) of the Act as they permit the collection of those charges for a transportation service which is specified in the carriers' published tariffs.

When, as the lower court found to be the case here, the Commission's findings are supported by substantial evidence; that it applied proper rules of law; and that its conclusion is rational, petitioner may not complain that it would prefer the matter to be decided more to its own advantage. *Mississippi Valley Barge Lines* v. *United States*, 292 U.S. 282, 286-287; *Manufacturers Ry. Co.* v. *United States*, 246 U.S. 457, 482; *Universal Camera Corp.* v. *N.L.R.B.*, 340 U.S. 474, 488; *Rochester Tel. Corp.* v. *United States*, 307 U.S. 125, 139.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition presents no issue warranting consideration by this Court; that the judgment of the court below is correct; and that the petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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